

## **National Child Protection Act of 1993**

[Public Law 103–209]

[As Amended Through P.L. 115–141, Enacted March 23, 2018]

【Currency: This publication is a compilation of the text of Public Law 103–209. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

AN ACT To establish procedures for national criminal background checks for child care providers.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### **SECTION 1. [34 U.S.C. 10101 note] SHORT TITLE.**

This Act may be cited as the “National Child Protection Act of 1993”.

### **SEC. 2. [34 U.S.C. 40101] REPORTING CHILD ABUSE CRIME INFORMATION.**

(a) IN GENERAL.—In each State, an authorized criminal justice agency of the State shall report child abuse crime information to, or index child abuse crime information in, the national criminal history background check system. A criminal justice agency may satisfy the requirement of this subsection by reporting or indexing all felony and serious misdemeanor arrests and dispositions.

(b) PROVISION OF STATE CHILD ABUSE CRIME RECORDS THROUGH THE NATIONAL CRIMINAL HISTORY BACKGROUND CHECK SYSTEM.—(1) Not later than 180 days after the date of enactment of this Act, the Attorney General shall, subject to availability of appropriations—

(A) investigate the criminal history records system of each State and determine for each State a timetable by which the State should be able to provide child abuse crime records on an on-line basis through the national criminal history background check system;

(B) in consultation with State officials, establish guidelines for the reporting or indexing of child abuse crime information, including guidelines relating to the format, content, and accuracy of criminal history records and other procedures for carrying out this Act; and

(C) notify each State of the determinations made pursuant to subparagraphs (A) and (B).

(2) The Attorney General shall require as a part of each State timetable that the State—

(A) by not later than the date that is 5 years after the date of enactment of this Act, have in a computerized criminal history file at least 80 percent of the final dispositions that have been rendered in all identifiable child abuse crime cases in which there has been an event of activity within the last 5 years;

(B) continue to maintain a reporting rate of at least 80 percent for final dispositions in all identifiable child abuse crime cases in which there has been an event of activity within the preceding 5 years; and

(C) take steps to achieve 100 percent disposition reporting, including data quality audits and periodic notices to criminal justice agencies identifying records that lack final dispositions and requesting those dispositions.

(c) LIAISON.—An authorized agency of a State shall maintain close liaison with the National Center on Child Abuse and Neglect, the National Center for Missing and Exploited Children, and the National Center for the Prosecution of Child Abuse for the exchange of technical assistance in cases of child abuse.

(d) ANNUAL SUMMARY.—(1) The Attorney General shall publish an annual statistical summary of child abuse crimes.

(2) The annual statistical summary described in paragraph (1) shall not contain any information that may reveal the identity of any particular victim or alleged violator.

(e) ANNUAL REPORT.—The Attorney General shall, subject to the availability of appropriations, publish an annual summary of each State's progress in reporting child abuse crime information to the national criminal history background check system.

(f) STUDY OF CHILD ABUSE OFFENDERS.—(1) Not later than 180 days after the date of enactment of this Act, the Administrator of the Office of Juvenile Justice and Delinquency Prevention shall begin a study based on a statistically significant sample of convicted child abuse offenders and other relevant information to determine—

(A) the percentage of convicted child abuse offenders who have more than 1 conviction for an offense involving child abuse;

(B) the percentage of convicted child abuse offenders who have been convicted of an offense involving child abuse in more than 1 State; and

(C) the extent to which and the manner in which instances of child abuse form a basis for convictions for crimes other than child abuse crimes.

(2) Not later than 2 years after the date of enactment of this Act, the Administrator shall submit a report to the Chairman of the Committee on the Judiciary of the Senate and the Chairman of the Committee on the Judiciary of the House of Representatives containing a description of and a summary of the results of the study conducted pursuant to paragraph (1).

**SEC. 3. [34 U.S.C. 40102] BACKGROUND CHECKS.**

(a) **IN GENERAL.**—(1) A State may have in effect procedures (established by State statute or regulation) that require qualified entities designated by the State to contact an authorized agency of the State to request a nationwide background check for the purpose of determining whether a covered individual has been convicted of a crime that bears upon the covered individual's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities.

(2) The authorized agency shall access and review State and Federal criminal history records through the national criminal history background check system and shall make reasonable efforts to respond to the inquiry within 15 business days.

(3)(A) The Attorney General shall establish a program, in accordance with this section, to provide qualified entities located in States that do not have in effect procedures described in paragraph (1), or qualified entities located in States that do not prohibit the use of the program established under this paragraph, with access to national criminal history background checks on, and criminal history reviews of, covered individuals. In any case where the use of a Federal national criminal history background check program is required pursuant to Federal law as of the effective date of this subparagraph, the program under this subparagraph may not be used.

(B) A qualified entity described in subparagraph (A) may submit to the appropriate designated entity a request for a national criminal history background check on, and a criminal history review of, a covered individual. Qualified entities making a request under this paragraph shall comply with the guidelines set forth in subsection (b), and with any additional applicable procedures set forth by the Attorney General or by the State in which the entity is located.

(b) **GUIDELINES.**—The procedures established under subsection (a) shall require—

(1) that no qualified entity may request a background check of a covered individual under subsection (a) unless the covered individual first provides a set of fingerprints and completes and signs a statement that—

(A) contains the name, address, and date of birth appearing on a valid identification document (as defined in section 1028 of title 18, United States Code) of the covered individual;

(B) the covered individual has not been convicted of a crime and, if the covered individual has been convicted of a crime, contains a description of the crime and the particulars of the conviction;

(C) notifies the covered individual that the entity may request a background check under subsection (a);

(D) notifies the covered individual of the covered individual's rights under paragraph (2); and

(E) notifies the covered individual that prior to the completion of the background check the qualified entity may choose to deny the covered individual access to a person to whom the qualified entity provides care;

(2) that the State, or in a State that does not have in effect procedures described in subsection (a)(1), the designated entity, ensures that—

(A) each covered individual who is the subject of a background check under subsection (a) is entitled to obtain a copy of any background check report;

(B) each covered individual who is the subject of a background check under subsection (a) is provided a process by which the covered individual may appeal the results of the background check to challenge the accuracy or completeness of the information contained in the background report of the covered individual and obtain a prompt determination as to the validity of such challenge before a final determination is made by the authorized agency;

(C)(i) each covered individual described in subparagraph (B) is given notice of the opportunity to appeal;

(ii) each covered individual described in subparagraph (B) will receive instructions on how to complete the appeals process if the covered individual wishes to challenge the accuracy or completeness of the information contained in the background report of the covered individual; and

(iii) the appeals process is completed in a timely manner for each covered individual described in subparagraph (B);

(iv) the appeals process is consistent with title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); and

(D) an authorized agency, upon receipt of a background check report lacking disposition data, shall conduct research in whatever State and local recordkeeping systems are available in order to obtain complete data;

(3) that an authorized agency or designated entity, as applicable,<sup>1</sup> upon receipt of a background check report lacking disposition data, shall conduct research in whatever State and local recordkeeping systems are available in order to obtain complete data;

(4) that the authorized agency or designated entity, as applicable, shall make a determination whether the covered individual has been convicted of, or is under pending indictment for, a crime that bears upon the covered individual's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities and shall convey that determination to the qualified entity; and

(5) that any background check under subsection (a) and the results thereof shall be handled in accordance with the requirements of Public Law 92-544, except that this paragraph does not apply to any request by a qualified entity for a national criminal fingerprint background check pursuant to subsection (a)(3).

(c) REGULATIONS.—(1) The Attorney General may by regulation prescribe such other measures as may be required to carry out the purposes of this Act, including measures relating to the security,

<sup>1</sup>The double commas in paragraph (3) is so in law. See amendment made by section 101(a)(1)(D)(iii) of division S of Public Law 115-141.

confidentiality, accuracy, use, misuse, and dissemination of information, and audits and recordkeeping.

(2) The Attorney General shall, to the maximum extent possible, encourage the use of the best technology available in conducting background checks.

(d) **LIABILITY.**—A qualified entity shall not be liable in an action for damages solely for failure to conduct a criminal background check on a covered individual, nor shall a State or political subdivision thereof nor any agency, officer or employee thereof,<sup>2</sup> nor shall any designated entity nor any officer or employee thereof, be liable in an action for damages for the failure of a qualified entity (other than itself) to take action adverse to a covered individual who was the subject of a background check.

(e) **FEES.**—

(1) **STATE PROGRAM.**—In the case of a background check conducted pursuant to a State requirement adopted after December 20, 1993, conducted with fingerprints on a covered individual, the fees collected by authorized State agencies and the Federal Bureau of Investigation may not exceed the actual cost of the background check conducted with fingerprints.

(2) **FEDERAL PROGRAM.**—In the case of a national criminal history background check and criminal history review conducted pursuant to the procedures established pursuant to subsection (a)(3), the fees collected by a designated entity shall be set at a level that will ensure the recovery of the full costs of providing all such services. The designated entity shall remit the appropriate portion of such fee to the Attorney General, which amount is in accordance with the amount published in the Federal Register to be collected for the provision of a criminal history background check by the Federal Bureau of Investigation.

(3) **ENSURING FEES DO NOT DISCOURAGE VOLUNTEERS.**—A fee system under this subsection shall be established in a manner that ensures that fees to qualified entities for background checks do not discourage volunteers from participating in programs to care for children, the elderly, or individuals with disabilities. A fee charged to a qualified entity that is not organized under section 501(c)(3) of the Internal Revenue Code of 1986 may not be less than the total sum of the costs of the Federal Bureau of Investigation and the designated entity.

(f) **NATIONAL CRIMINAL HISTORY BACKGROUND CHECK AND CRIMINAL HISTORY REVIEW PROGRAM.**—

(1) **NATIONAL CRIMINAL HISTORY BACKGROUND CHECK.**—Upon a designated entity receiving notice of a request submitted by a qualified entity pursuant to subsection (a)(3), the designated entity shall forward the request to the Attorney General, who shall, acting through the Director of the Federal Bureau of Investigation, complete a fingerprint-based check of the national criminal history background check system, and provide the information received in response to such national criminal history background check to the appropriate des-

<sup>2</sup>The double commas in subsection (d) is so in law. See amendment made by section 101(a)(1)(E) of division S of Public Law 115–141.

ignated entity. The designated entity may, upon request from a qualified entity, complete a check of a State criminal history database.

(2) CRIMINAL HISTORY REVIEW.—

(A) DESIGNATED ENTITIES.—The Attorney General shall designate, and enter into an agreement with, one or more entities to make determinations described in subparagraph (B). The Attorney General may not designate and enter into an agreement with a Federal agency under this subparagraph.

(B) DETERMINATIONS.—A designated entity shall, upon the receipt of the information described in paragraph (1), make a determination of fitness described in subsection (b)(4), using the criteria described in subparagraph (C).

(C) CRIMINAL HISTORY REVIEW CRITERIA.—The Attorney General shall, by rule, establish the criteria for use by designated entities in making a determination of fitness described in subsection (b)(4). Such criteria shall be based on the criteria established pursuant to section 108(a)(3)(G)(i) of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (34 U.S.C. 40102 note) and section 658H of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858f).

**SEC. 4. [34 U.S.C. 40103] FUNDING FOR IMPROVEMENT OF CHILD ABUSE CRIME INFORMATION.**

(a) USE OF FORMULA GRANTS FOR IMPROVEMENTS IN STATE RECORDS AND SYSTEMS.—Section 509(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3759(b)) is amended—

- (1) in paragraph (2) by striking “and” after the semicolon;
- (2) in paragraph (3) by striking the period and inserting “; and”; and

(3) by adding at the end the following new paragraph:

“(4) the improvement of State record systems and the sharing of all of the records described in paragraphs (1), (2), and (3) and the child abuse crime records required under the National Child Protection Act of 1993 with the Attorney General for the purpose of implementing the National Child Protection Act of 1993.”.

(b) ADDITIONAL FUNDING GRANTS FOR THE IMPROVEMENT OF CHILD ABUSE CRIME INFORMATION.—(1) The Attorney General shall, subject to appropriations and with preference to States that, as of the date of enactment of this Act, have in computerized criminal history files the lowest percentages of charges and dispositions of identifiable child abuse cases, make a grant to each State to be used—

(A) for the computerization of criminal history files for the purposes of this Act;

(B) for the improvement of existing computerized criminal history files for the purposes of this Act;

(C) to improve accessibility to the national criminal history background check system for the purposes of this Act;

(D) to assist the State in the transmittal of criminal records to, or the indexing of criminal history record in, the national criminal history background check system for the purposes of this Act; and

(E)<sup>3</sup>to assist the State in paying all or part of the cost to the State of conducting background checks on persons who are employed by or volunteer with a public, not-for-profit, or voluntary qualified entity to reduce the amount of fees charged for such background checks.

(2) There are authorized to be appropriated for grants under paragraph (1) a total of \$20,000,000 for fiscal years 1999, 2000, 2001, and 2002.

(c) WITHHOLDING STATE FUNDS.—Effective 1 year after the date of enactment of this Act, the Attorney General may reduce, by up to 10 percent, the allocation to a State for a fiscal year under title I of the Omnibus Crime Control and Safe Streets Act of 1968 that is not in compliance with the requirements of this Act.

#### SEC. 5. [34 U.S.C. 40104] DEFINITIONS.

For the purposes of this Act—

(1) the term “authorized agency” means a division or office of a State designated by a State to report, receive, or disseminate information under this Act;

(2) the term “child” means a person who is a child for purposes of the criminal child abuse law of a State;

(3) the term “child abuse crime” means a crime committed under any law of a State that involves the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child by any person;

(4) the term “child abuse crime information” means the following facts concerning a person who has been arrested for, or has been convicted of, a child abuse crime: full name, race, sex, date of birth, height, weight, fingerprints, a brief description of the child abuse crime or offenses for which the person has been arrested or has been convicted, the disposition of the charge, and any other information that the Attorney General determines may be useful in identifying persons arrested for, or convicted of, a child abuse crime;

(5) the term “care” means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities;

(6) the term “identifiable child abuse crime case” means a case that can be identified by the authorized criminal justice agency of the State as involving a child abuse crime by reference to the statutory citation or descriptive label of the crime as it appears in the criminal history record;

(7) the term “individuals with disabilities” means persons with a mental or physical impairment who require assistance to perform one or more daily living tasks;

(8) the term “national criminal history background check system” means the criminal history record system maintained

<sup>3</sup>Section 320928(d)(3) of Pub. L. 103–322, which directed the amendment of subsection (b) by adding subparagraph (E) at the end, was executed by adding subparagraph (E) at the end of paragraph (1) of subsection (b) to reflect the probable intent of Congress.

by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification;

(9) the term “covered individual” means an individual—

(A) who has, seeks to have, or may have access to children, the elderly, or individuals with disabilities, served by a qualified entity; and

(B) who—

(i) is employed by or volunteers with, or seeks to be employed by or volunteer with, a qualified entity; or

(ii) owns or operates, or seeks to own or operate, a qualified entity;

(10) the term “qualified entity” means a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides care or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services;

(11) the term “State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territories of the Pacific; and

(12) the term “designated entity” means an entity designated by the Attorney General under section 3(f)(2)(A).